in any one person's hands. Thus, in the Congress they created a House of Representatives which represents the population, and a Senate, which was the Great Compromise in the Constitutional Convention of 1787—the Senate that represented each State equally with two Senators. In the rules that evolved from that body, the checks and balances arose to protect the minority.

Let us look in the separation of powers, the executive, the legislative, and the judicial. What was created, and created over time, was the value of an independent judiciary, a judiciary that was going to be appointed in a two-step process. A one-step process that the Constitutional Convention rejected was that the appointment be only by the President. The Constitutional Convention created a two-step process in which the President nominates and the Senate confirms or rejects. That is part of the checks and balances.

I must say, as a senior Senator from Florida, I have been absolutely bewildered at statements I have heard on the floor of the Senate as well as I have heard from some of my colleagues when we have been interviewed on these news programs in which it is claimed we are rejecting all of these judges. Let me tell you what this Senator from Florida has done. Of the 215 nominations before the Senate, this Senator has voted for 206 of them. That means there are only 9 this Senator has not voted for. In other words, under the administration of President George W. Bush, I have voted for 206 of his 215 nominations. That is 96 percent I voted for.

Does that sound as though this Senator is not approving all of the conservative judges? Every one of those judges who have come forth to us was a conservative judge. I have voted for 96 percent of them. I can tell you that the 9 I have not voted for—by the way, I voted for one a majority of my party voted against, and that was Miguel Estrada. But I had reasons, because I called him in and asked him if he would obey the law as a court of appeals judge. He said he would. I said that is good enough for me. But the remaining nine, I have plenty of reasons why I do not think they are entitled to a lifetime appointment as a Federal judge.

That is my prerogative as a Senator, and it is also my prerogative as a Senator under the rules of the Senate to stand up and to speak as long as this Senator has breath in order to get that opinion across.

I have been amazed to hear some of my colleagues say here on the Senate floor as well as in some of these television interviews that we have done—and sometimes done together—that utilizing the filibuster has never been used, they say, against a judge nominee. My goodness, all you have to do is look at history. In 1881, Stanley Matthews was nominated by President Hayes to be a Justice of the Supreme Court, and he was filibustered. In 1968, Abe Fortas was nominated by President Johnson to be Chief Justice of the United States Supreme Court, and he was filibustered.

Since the start of the George W. Bush administration in 2001, 11 judicial nominations have needed 60 votes for cloture in order to end a filibuster. That is before President Bush's term which started in 2001.

How people can come with a straight face and say a filibuster has not been used on judicial appointments, I simply don't understand. It defies the historical record of the Senate.

I think there are several principles that are very important as we consider this. It is my hope—and I have reached out to colleagues, dear personal friends who are friends regardless of party—that we can avoid this constitutional clash which should not be and changing the rules by breaking the rules.

Remember, a filibuster is to help encourage compromise. We shouldn't be changing the rules in the middle of the game. The underlying principle I want our Senators to remember as we get into this debate—hopefully it will be headed off by cooler minds. As the Good Book says, come now and let us reason together. Remember these principles.

The Constitution stands for an independent judiciary. There are very necessary checks and balances in our form of government to keep the accumulation of power from any one agency, or executive branch, or person's hands.

We should not be overruling the Parliamentarian. We must encourage compromise. To change the rules in the middle of the game is bordering on an abuse of power. Surely the Senate can rise above this partisan, highly ideological set of politics and come together for the sake of the Nation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I will speak in morning business to the point discussed by my colleague from Florida. I understand another Senator was going to be here; when he arrives, I will yield the floor.

It is important for my colleagues and for the American people to appreciate a little bit of the background of this issue with respect to judges. My colleague from Florida makes a point that he has voted for most of the President's judicial nominees. Indeed, that has been the case with every Senator for every President.

But until the last 2 years, we have voted both for district court nominees and circuit court nominees. Two years ago, the Democratic minority began filibustering circuit court nominees. That is why President Bush has had a lower percentage of his nominees approved than any President since Franklin Roosevelt for the important circuit court positions. In fact, a third of President Bush's circuit court nominees were filibustered or could not be brought to a vote because they would have been filibustered; fully 17 out of around 35.

So when our colleagues on the other side of the aisle talk about the large number of judges they have approved, they are folding in all of the Federal district court nominees everyone has always voted for. That is not the appropriate measure. The question is, how many circuit court nominees? Never before, in the history of our country, have we seen circuit court nominees or district court nominees, for that matter, but circuit court nominees filibustered in this manner—ten separate judges we could not come to a final up-or-down vote, seven more who would have had the same fate had they been voted for. That has never happened before in the history of the country.

Our colleague from Illinois was discussing the fact that a former Senator from New Hampshire had, in this Senate, talked about filibuster, following a couple of judges for the Ninth Circuit Court of Appeals. In fact, that Senator had said that. The interesting point is, even though he, a single Senator, wanted to filibuster the nominees—their names were Berzon and Paez—the Republican leader, TRENT LOTT from Mississippi, made an arrangement with the then-Democratic leader, Daschle from South Dakota, that they would not be filibustered, and we filed cloture, which is the petition to bring the matter to a close so we could take a final vote. Senators on both sides of the aisle supported the cloture motion, so they supported getting to a final vote on those two judges. Of course, cloture was invoked, meaning they were not filibustered.

They were brought up for a vote. Some voted against them—I voted for Berzon and against Paez—but the net result is they are both sitting on the Ninth Circuit Court of Appeals today. They were not filibustered. So there is no case of a filibuster of the circuit court judge. None.

Second, the only other situation in which it is alleged a filibuster occurred was with Abe Fortas, whose name was withdrawn by Lyndon Johnson the day after a cloture vote failed to succeed. As Senator Griffin from Michigan, who was then leading that opposition to Abe Fortas, has told me and others, there was no effort to filibuster because they had the votes to kill the judge. They simply had not had time to debate him, which is why they voted against the cloture, but as a result of the President acknowledging he had no support in the Senate, his name was withdrawn.

There has never been a filibuster of a Supreme Court or circuit court judge in the United States—it simply is erroneous to suggest there has been—nor is it correct to say we have been voting on all of these different judges. If you take the district court judges out, about whom there is no controversy, there is a huge issue because fully a third of the President's circuit court